



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDV/170012

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on December 22, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner divested \$52,000.00.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Nick Kusch

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. A Medicaid application was submitted to the agency on behalf of Petitioner on September 1, 2015. That application was denied as the agency determined that Petitioner had divested \$52,000.00.
3. Petitioner owned her own home but quit claimed a joint tenancy to her son in April 2012. At that same time Petitioner and her son took out a loan in the amount of \$125,000.00.

4. On December 17, 2012 Petitioner quit claimed the entire interest in her homestead to her son. On that same day Petitioner's son gave Petitioner 4 promissory notes. Each was for \$13,000.00 and each called for a balloon payment of the \$13,000.00 and interest on successive January 1<sup>st</sup>s for 4 years with the first being due on January 1, 2013 and the last on January 1, 2016.
5. There is no record of payment of the promissory notes described at Finding 4 as called for by the notes themselves.

### DISCUSSION

A person seeking Medical Assistance is ineligible if his/her assets exceed \$2,000. *Wis. Stat. § 49.47(4)(b)3g*. In order to prevent those with enough funds to pay for their own medical care from becoming a burden to the general public by passing their assets to potential heirs, Medicaid law prevents a recipient from reaching this asset limit by divesting assets.

Further, in an administrative hearing, such as this, the petitioner has the burden of proof to establish that a denial action taken by the county, like the denial of Medicaid due to a divestment of assets was improper given the facts of the case. *See, 20 C.F.R. §§416.200-416.202; see also, 42 C.F.R. §435.721(d)*. While oral testimony concerning the intent of the applicant is important, great weight must be afforded by the actions taken by the applicant given the overall circumstance at the time. Thus the explanation as to the transfer of assets must be well documented and evident in light of all of the facts.

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse transfers assets at less than fair market value, the individual is ineligible for Institutional MA, which provides coverage of nursing facility services. *42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code §DHS 103.065(4)(a); Medicaid Eligibility Handbook (MEH), §17.2.1*. Very generally, the 'lookback' period from the date of application or entry into a nursing home is 60 months. *Wis. Stat. § 49.453(1)(f)2m*. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (these are called "MA card services").

At one time, the penalty period was calculated as the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services. The Federal Deficit Reduction Act of 2005 (DRA) requires the imposition of partial months of ineligibility for divestments. For all divestments that occur on or after January 1, 2009, the penalty periods are to be calculated as the number of days for which Medicaid will not pay for long term care services. Penalty periods are no longer rounded down to whole months. In order to impose partial months of ineligibility, as required by the DRA, all divestment penalties will be calculated in days, using the average daily nursing home cost to a private pay patient. *MEH, § 17.5.1*. This is currently \$252.95. *Id., §17.5.2*.

Further, the Wisconsin Statutes contain the following provision concerning promissory notes:

...

**(4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE.** (a) For purposes of sub. (2), the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage after February 8, 2006, is a transfer of assets for less than fair market value unless all of the following apply with respect to the note, loan, or mortgage:

1. The repayment term is actuarially sound.
2. The payments are to be made in equal amounts during the term of the loan, with no deferral and no balloon payment.
3. Cancellation of the balance upon the death of the lender is prohibited.

...

*Wis. Stats., §49.453(4c)(a); also see 42 US Code § 1396p(c)(I)(ii) and MEH, §17.2, release 10-02.*

While Petitioner's son contends that he repaid the promissory notes involved here by assuming Petitioner's half of the mortgage debt and by paying for improvements to make the home wheelchair

accessible there is no record of payment of the promissory notes described at Finding 4 as called for by the notes themselves. Nonetheless, this raises a number of issues that I do not find it necessary to address, e.g., the value of the property, the use of the \$125,000 from the December 2012 loan, payment to a relative and documentation, or lack thereof, for any of this. I need not be drawn into disputes as to these issues as the only divestment pursued by the agency at this time is the promissory note issue.

As to that issue, the law and the Department policy is clear – if the promissory note calls for a balloon payment it does not meet the standards necessary to exempt it from being a divestment even if payment had been made. The promissory notes involved here do require a balloon payment and are, therefore, a divestment. I am sustaining the agency determination that a divestment occurred.

### **CONCLUSIONS OF LAW**

That the agency correctly concluded that a \$52,000.00 divestment occurred as alleged.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of January, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 28, 2016.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
Attorney Patricia Schober